



## **Texas Department of Insurance**

### **Division of Workers' Compensation**

Medical Fee Dispute Resolution, MS-48

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

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## **MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION**

### **GENERAL INFORMATION**

#### **Requestor Name and Address**

HOUSTON NW MED CTR  
c/o LAW OFFICES OF P. MATTHEW O'NEIL  
6514 MCNEIL DRIVE BLDG 2 SUITE 201  
AUSTIN, TX 78729

#### **DWC Claim #:**

**Injured Employee:**

**Date of Injury:**

**Employer Name:**

**Insurance Carrier #:**

#### **Respondent Name**

SOUTHWESTERN BELL TELEPHONE LP

#### **Carrier's Austin Representative Box**

17

#### **MFDR Tracking Number**

M4-09-0128-01

#### **MFDR Date Received**

September 03, 2008

### **REQUESTOR'S POSITION SUMMARY**

**Requestor's Position Summary:** "As set forth in the attached billing and records, the claimant in this case was admitted and received an inpatient surgical procedure, specifically lumbar decompression and lumbar instrumented fusion. The procedure involved the use of the OR, local anesthesia, supplies and pharmaceuticals. Fair and reasonable payment on this claim should be at 75% of the hospital's charges, as the amount billed was over the \$40,000 minimum stop-loss threshold. As set forth below, the State Office of Administrative Hearings and Travis County District Court Judge Margaret Cooper have each held and entered judgement that for medical charges exceeding \$40,000.00, the carrier is required as a matter of law to pay 75% of the charges ... As required by law, Houston Northwest Medical Center (hereinafter referred to as "the Hospital") billed its usual and customary charges for the medical services ... Pursuant to DWC Rule 134.401(c)(6)(A)(i)(iii), once the bill has reached the minimum stop-loss threshold of \$40,000, the entire bill will be paid using the stop-loss reimbursement factor of 75%."

**Amount in Dispute:** \$31,429.42

### **RESPONDENT'S POSITION SUMMARY**

**Respondent's Position Summary Dated September 15, 2008:** "... Following review of the providers Request for Reconsideration and the accompanying medical records, there is no evidence that there is anything particularly "unusually costly or extensive" about this hospital admission."

**Response Submitted by:** Liberty Mutual Insurance Group

### **SUMMARY OF FINDINGS**

Disputed Dates	Disputed Services	Amount In Dispute	Amount Due
September 04, 2007 through September 07, 2007	Inpatient Hospital Services	\$31,429.42	\$0.00

## ***FINDINGS AND DECISION***

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

### **Background**

1. 28 Texas Administrative Code §133.305 and §133.307, 33 *Texas Register* 3954, applicable to requests filed on or after May 25, 2008, sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §134.401, 22 *Texas Register* 6264, effective August 1, 1997, sets out the fee guidelines for inpatient services rendered in an acute care hospital.

The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of Benefits dated October 30, 2007

- Z710 – The charge for this procedure exceeds the fee schedule allowance
- X115 – Payment for this charge is not recommended without a statement documenting medical necessity
- Z711 – The charge for this procedure exceeds the customary charges by other providers for this service

Explanation of Benefits dated April 14, 2008

- Z710 – The charge for this procedure exceeds the fee schedule allowance
- X115 – Payment for this charge is not recommended without a statement documenting medical necessity
- Z711 – The charge for this procedure exceeds the customary charges by other providers for this service

### **Issues**

1. Did the audited charges exceed \$40,000.00?
2. Did the admission in dispute involve unusually extensive services?
3. Did the admission in dispute involve unusually costly services?
4. Is the requestor entitled to additional reimbursement?

### **Findings**

This dispute relates to inpatient surgical services provided in a hospital setting with reimbursement subject to the provisions of division rule at 28 Texas Administrative Code §134.401, titled *Acute Care Inpatient Hospital Fee Guideline*, effective August 1, 1997, 22 *Texas Register* 6264. The Third Court of Appeals' November 13, 2008 opinion in *Texas Mutual Insurance Company v. Vista Community Medical Center, LLP*, 275 *South Western Reporter Third* 538, 550 (Texas Appeals – Austin 2008, petition denied) addressed a challenge to the interpretation of 28 Texas Administrative Code §134.401. The Court concluded that "to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved unusually costly and unusually extensive services." Both the requestor and respondent in this case were notified via form letter that the mandate for the decision cited above was issued on January 19, 2011. Each party was given the opportunity to supplement their original MDR submission, position or response as applicable. The documentation filed to the division by the requestor and respondent as noted above is considered. Consistent with the Third Court of Appeals' November 13, 2008 opinion, and 28 Texas Administrative Code §134.401(c)(6), the division will address whether the requestor demonstrated that: audited charges **in this case** exceed \$40,000; the admission and disputed services **in this case** are unusually extensive; and that the admission and disputed services **in this case** are unusually costly.

1. 28 Texas Administrative Code §134.401(c)(6)(A)(i) states "...to be eligible for stop-loss payment the total audited charges for a hospital admission must exceed \$40,000, the minimum stop-loss threshold." Furthermore, (A) (v) of that same section states "...Audited charges are those charges which remain after a bill review by the insurance carrier has been performed..." The division concludes that the total audited charges exceed \$40,000.
2. The requestor in its position statement asserts that "Fair and reasonable payment or this claim should be at 75% of the hospital's charges, as the amount billed was over the \$40,000 minimum stop-loss threshold ... Pursuant to DWC Rule 134.401(c)(6)(A)(i)(iii), once the bill has reached the minimum stop-loss threshold of \$40,000, the entire bill will be paid using the stop-loss reimbursement factor of 75%." The requestor presumes that it is entitled to the stop loss method of payment because the audited charges exceed \$40,000. As noted above, the Third Court of Appeals in its November 13, 2008 rendered judgment to the contrary. The Court

concluded that “to be eligible for reimbursement under the Stop-Loss Exception, a hospital must demonstrate that the total audited charges exceed \$40,000 and that an admission involved...unusually extensive services.” The requestor failed to discuss or demonstrate that the particulars of the admission in dispute constitute unusually extensive services; therefore, the division finds that the requestor did not meet 28 TAC §134.401(c)(6).

3. In regards to whether the services were unusually costly, the requestor presumes that because the bill exceeds \$40,000, the stop loss method of payment should apply. The third Court of Appeals’ November 13, 2008 opinion concluded that in order to be eligible for reimbursement under the stop-loss exception, a hospital must **demonstrate** that an admission involved unusually costly services thereby affirming 28 Texas Administrative Code §134.401(c)(6) which states that “Stop-loss is an independent reimbursement methodology established to ensure fair and reasonable compensation to the hospital for unusually costly services rendered during treatment to an injured worker.” The requestor failed to discuss the particulars of the admission in dispute that constitute unusually costly services; therefore, the division finds that the requestor failed to meet 28 TAC §134.401(c)(6).
4. For the reasons stated above the services in dispute are not eligible for the stop-loss method of reimbursement. Consequently, reimbursement shall be calculated pursuant to 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount* and §134.401(c)(4) titled *Additional Reimbursements*. The division notes that additional reimbursements under §134.401(c)(4) apply only to bills that do not reach the stop-loss threshold described in subsection (c)(6) of this section.
  - Division rule at 28 Texas Administrative Code §134.401(c)(3)(ii) states, in pertinent part, that “The applicable Workers’ Compensation Standard Per Diem Amount (SPDA) is multiplied by the length of stay (LOS) for admission ...” Review of the submitted documentation finds that the length of stay for this admission was three ICU/CCU; therefore the standard per diem amount is \$1,560.00 and applies respectively. However, documentation supports that the Carrier pre-authorized a length of stay of three days in accordance with 28 Texas Administrative Code Rule §134.600. Consequently the per diem rate allowed is \$4,680.00 for the three authorized days.
  - 28 Texas Administrative Code §134.401(c)(4)(C) states “Pharmaceuticals administered during the admission and greater than \$250 charged per dose shall be reimbursed at cost to the hospital plus 10%. Dose is the amount of a drug or other substance to be administered at one time.” A review of the submitted itemized statement finds that the requestor billed one unit of Gelfoam 100 at \$299.25/unit, for a total charge of \$299.25. The requestor did not submit documentation to support what the cost to the hospital was for Gelfoam 100. For that reason, reimbursement for these items cannot be recommended.
  - Review of the medical documentation provided finds that although the requestor billed items under revenue code 278, no invoices were found to support the cost of the implantables billed. For that reason, no additional reimbursement is recommended.

The division concludes that the total allowable for this admission is \$4,680.00. The respondent issued payment in the amount of \$11,937.89. Based upon the documentation submitted, no additional reimbursement can be recommended.

## **Conclusion**

The submitted documentation does not support the reimbursement amount sought by the requestor. The requestor in this case demonstrated that the audited charges exceed \$40,000, but failed to demonstrate that the disputed inpatient hospital admission involved unusually extensive services, and failed to demonstrate that the services in dispute were unusually costly. Consequently, 28 Texas Administrative Code §134.401(c)(1) titled *Standard Per Diem Amount*, and §134.401(c)(4) titled *Additional Reimbursements* are applied and result in no additional reimbursement.

## ***ORDER***

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

## **Authorized Signature**

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Signature

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Medical Fee Dispute Resolution Officer

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1/4/13  
Date

### ***YOUR RIGHT TO APPEAL***

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision* together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.****

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**